

- Menon, I. (ed.), Human Rights in International Law, (1985)
- Robertson, A.B. (ed.), Human Rights in National and International Law, (1970)
- Lauterpacht, E., International Law and Human Rights, (1968)
- Robertson, E., Human Rights in the World, (1972)
- Sohn, Lonis & Burgenthal, International Protection of Human Rights, (1973)
- Baxi, U., "Human Rights, Accountability and Development", Indian Journal of International Law, 279, (1978)
- Basu, D.D., Human Rights in Constitutional Law, (1994)
- Macfarlane, L.J., The Theory and Practice of Human Rights, (1985)
- Krishna Iyer, V.R., Human Rights - A Judge's Miscellany, (1995)
- Rama Jois, M., Human Rights: Bharatiya Values, (1998)

## **GROUP (E) : SCIENCE, TECHNOLOGY AND LAW**

### **PAPER – I : LAW, SCIENCE AND TECHNOLOGY**

#### **1. Introductory : Science.**

- 1.1. Conceptions of "Science" Science as natural philosophy and modern science.
- 1.2. Scientific thought in ancient and medieval India.
- 1.3. Modern Science: This scientific revolution (Copernicus, Galileo, Descartes, Newton, Lavoisier, Darwin, Einstein).
- 1.4. The role of legal order in institutionalisation of conceptions of sciences and repression of "Alternate" Sciences.

#### **2. Introductory: Technology.**

- 2.1. Notions of technology.
- 2.3. Legal order and technological innovation general considerations.
- 2.4. The emergence of western technology (1500-1750)
  - 2.3.1. The renaissance.
  - 2.3.2. The steam engine.
  - 2.3.3. Metallurgy and mining.
  - 2.3.4. New commodities.

- 2.3.5. Agriculture.
- 2.3.6. Transport and communications.
- 2.3.7. Chemistry.
- 2.4. The industrial revolution.
  - 2.4.1. Power technology.
  - 2.4.2. Development of industries (Metallurgy). Mechanical Engineering Textiles, Chemicals, Agriculture, Civil Engineering, Transport and Communication, Military Technology).
- 3. Colonization, Science and Technology.**
  - 3.1. Industrial revolution and colonization.
  - 3.2. Creation of the political economy of backwardness through colonizing powers and processes.
  - 3.3. Displacement of indigenous science and technology during colonization.
  - 3.4. Colonial legal order and its role in 3.1 to 3.3.
- 4. Technology in the Twentieth Century.**
  - 4.1. The second industrial revolution: Computers.
  - 4.2. The Nuclear technology for peace and war.
  - 4.3. Biotechnology.
  - 4.4. Space technology.
  - 4.4. Role of national & international orders relative to these.
- 5. The Emergence of Technological Society and State.**
  - 5.1. Technology and practice of politics.
  - 5.2. Law as social technology.
  - 5.3. Notions of technological society.
  - 5.4. "Scientism" and notions of scientific temper.

### **Select Bibliography**

- Markandey Katju, Law in the Scientific Era (2000), Universal, New Delhi.
- Helen Reece (ed.), "Law and Science" in Current Legal Issues (1998) Oxford
- Philip Grubb, Patents for Chemicals, Pharmaceuticals and Biotechnology (1999) Oxford



- John Zinian et.al.(ed.) World of Science and the Rule of Law (1986), Oxford
- Ann Johnston et.al. (ed.) New Technologies and Development (1986)  
UNESCO.
- Maie-Wan Ho, Genetic Engineering: Dreams or Nightmare? The Brave New  
World of Bad Science and Big Business (1997) RESTE, New Delhi.
- Cees J. Hamelink, The Ethics of Cyberspace (2001), Sage.

## **PAPER – II : LAW, SCIENCE AND MEDICINE**

- 1. Profession and Professionals Self Regulation**
  - 1.1. Notion of a 'profession'
  - 1.2. The varieties of medical professions in India
  - 1.3. The pharmaceutical industry in India. A profile
  - 1.4. para-professionals
  - 1.5. Self Regulation through codes of conduct and disciplinary proceedings
  - 1.6. Self Regulation through education
  - 1.7. Self-Regulation through institutional discipline: Hospital regulation
- 2. The Regulation and Organization of Medical Education and Profession in India**
  - 2.1. Medical education: Dilemmas of federalism and judicial review
  - 2.2. Medical education, rural health and family planning
  - 2.3. Organization of medical research under governmental auspices
  - 2.4. Bhopal catastrophe and ICMR 2.5 "Health for All" by 2000 A.D.
  - 2.5. Article 21 of the Constitution and the foregoing aspects
- 3. The Regulation of Pharmaceutical Industry**
  - 3.1. Select problems under the Drugs Act
  - 3.2. The Hathi Committee Report and aftermath on essential drugs
  - 3.3. Regulation of research and development
  - 3.4. Public sector in pharmaceuticals
  - 3.5. Competition Act and drugs
  - 3.6. Advertising and consumer protection
  - 3.7. Regulation of drug-testing procedures in India

- 3.8. Multinational drug industry in India: Patent law aspects and dumping of unsafe drugs

#### **4. Experimentation and Regulation**

- 4.1. The Doctrine of "Informed Consent"
- 4.2. Experimental Abuses
- 4.3. Experimentation on Foetuses and Children
- 4.5. Experimentation on People in Custody, including psychiatric Custody
- 4.6. Proper Role for Experimentation on Animals

#### **5. The Physician-Patient Relationship**

- 5.1. Confidentiality and Privilege
- 5.2. Patient's right of full disclosure of course of therapy including side effects of drugs
- 5.3. Medical malpractice
- 5.4. Health insurance
- 5.5. The law relating to medico-legal cases with special reference to (i) road accidents, (ii) sexual assaults and (iii) mass disasters (e.g. Bhopal)

#### **Select Bibliography**

The materials for the course will have to be designed by a thorough study of legislative texts as well as reported judicial discussion in each area. In addition, WHO materials should also be consulted.

Charles Modwal, *Injury? An Enquiry into the Marketing and Advertising of British Food and Drug Products in India and Malaysia* (1981).

Lokojan Bulletin, Special Issue. Bhopal -An Interim Appraisal (Jan-April, 1988)

Centre for Science and Environment, *The State of India's Environment. The Second Citizen's Report* (1985)

*Socialist Health Review* (published from Bombay).

Dkina Melrose, *Bitter Pills: Medicines and The Third World Poor* (1982),  
*Proceedings of the World Congress on Law and Medicine held at Delhi* (1984)



Pragya Kumar, Medical Education in India (1987).

Government of India, Report of Working Group on Health for All by 2000  
A.D.

**PAPER – III : THE ELECTRONICS REVOLUTION AND  
LEGAL ORDER**

**1. Introductory**

- 1.1. Notion of artificial intelligence,
- 1.2. Growth of computer science and technology
- 1.3. "Hardware" and "Software"
- 1.4. Organization of R & D and of international market for computer systems
- 1.5. The overall Indian position.

**2. Artificial Intelligence and Human Resources**

- 2.1. Can computers think?
- 2.2. Appropriation of human functions by a machine actuality, potentiality, "appropriateness".

**3. The Law: Intellectual Property**

- 3.1. Law relating to protection of computer software
- 3.2. Law relating to patenting of hardware
- 3.3. Regulation of transfer of computer technology (Unfair Means, Restrictive Trade Practices)

**4. Potential for Invasion of Privacy**

- 4.1. Central data banks and privacy rights
- 4.2. Consumer Credit, privacy rights and computer systems

**5. Computer Systems and Liability Issues**

- 5.1. Computer fraud
- 5.2. Computer non-feasance and liability for damages

**6. Computer Systems and Renovation of Legal Order**

- 6.1. Legal information retrieval systems

- 6.2. Computerized retrieval of judicial decision
- 6.3. Jurimetrics and computer analysis
- 6.2. Computer analysis and computerization
- 6.3. Criminological analysis and computerization
- 6.4. Patent information systems
- 6.5. Management of courts
- 6.6. Role of computer analysis

### **Select Bibliography**

Cees J. Hamelink, *The Ethics of Cyberspace* (2001), Sage

Markandey Katju, *Law in the Scientific Era* (2000), Universal, New Delhi.

John Zinian et.al.(ed.) *World of Science and the Rule of Law* (1986), Oxford

Ann Johnston et.al. (ed.) *New Technologies and Development* (1986)  
UNESCO.

Maie-Wan Ho, *Genetic Engineering: Dreams or Nightmare? The Brave New World of Bad Science and Big Business* (1997) RESTE, New Delhi.

### **PAPER – IV : NUCLEAR TECHNOLOGY: DILEMMAS OF LEGAL CONTROLS**

#### **1. Introduction**

- 1.1. Nuclear Fission/Fusion
- 1.2. Radioactivity
- 1.3. Fission product and half-life measure
- 1.4. "Thermal" and "Fast" reactors
- 1.5. Heavy-water reactors
- 1.6. Nuclear fuel

#### **2. Development in Civilian Uses of Nuclear Energy**

- 2.1. "Atoms For Peace" and International Atomic Energy Commission (IAEA)
- 2.2. The European Atomic Energy Community (EUROTAM)
- 2.3. Development of nuclear industry at a global level



### **3. India's Atomic Energy Programme**

- 3.1. India's overall energy needs and planning
- 3.2. India's Nuclear Energy Programme
- 3.3. The Atomic Energy Commission Act
- 3.4. Technology transfer and India's nuclear programme

### **4. Hazard Aspects of Nuclear Power**

- 4.1. Plant Location: Problems of sites
- 4.2. Uranium mining associated hazards
- 4.3. Accidents Potential: e.g. fuel failure, re-circulation pump failures, control valve leaks, failure of shut-down device, metal failure, of electronic monitoring and control systems.
- 4.4. Containment facilities
- 4.5. Occupational hazards for workers at research institutes and nuclear plants
- 4.6. The Regime of legal liability including:
  - 4.6.1. Right to information as to levels of radioactivity
  - 4.6.2. Right to compensation
  - 4.6.3. Right to meaningful "rehabilitation"

### **5. Other Associated Hazards and Other Management**

- 5.1. The nature and magnitude of nuclear wastes
  - 5.1.1. Reprocessing
  - 5.1.2. Entombment
  - 5.1.3. Low level wastes and High Level Wastes
  - 5.1.4. Reprocessing of wastes
  - 5.1.5. Vitrification
  - 5.1.6. "Dumping"

### **6. Legal Aspects**

- 6.1. Secrecy
- 6.2. Minimum public participation
- 6.3. Right to information
- 6.4. Regimes of liability for mass disasters and personal injuries

- 6.5. Environmental: Law regulation of the hazardous aspects of nuclear energy production.

### **Select Bibliography**

In addition to official documents (e.g., Report of the DAE and Regulative Texts, consult, Centre for Science and Environment, The State of India's environment : 1984-1985 : The Second Citizen's Report (1985) Also see relevant articles in Economic and Political Weekly; and the recent Supreme Court decision on the EEC radioactive butter case.

## **PAPER – V : BIOTECHNOLOGY AND LEGAL REGULATION**

### **1. Introductory**

- 1.1. Decoding the Structure of the DNA/RNA
- 1.2. The Technology of Splicing
- 1.3. Cloning
- 1.4. Cell-Fusion
- 1.5. Genetic Engineering

### **2. The Case For and Against Genetic Engineering**

- 2.1. The problem of biohazards in recombinant DNA Research
- 2.2. Men should not play God and create new forms of life unknown to nature
- 2.3. Social responsibility of scientists
- 2.4. Multi-national and imperialist appropriation and use of biotechnology
- 2.5. Failures of self-regulation and vicissitudes of legal regulation
- 2.6. The right of scientific research as an aspect of basic human rights
- 2.7. There is no cost-free innovations and invention
- 2.6. Biohazards can be contained
- 2.7. Non-exploitative Biotechnology is both conceivable and likely
- 2.8. Legal incentives such as patenting or new life-forms is a necessary, though not sufficient, condition for advances in frontier technologies



### **3. Biotechnology Agro-business and Biological Diversity**

- 3.1. Plant Genetic Resources in Nature: Abundance of biological diversity
- 3.2. The Genetic mutation of Seed: Seed industry at global level: Indian Seeds Act, 1966
- 3.3. The Impact of Biotechnology on Biological Diversity: Erosion of plant genetic resources
- 3.4. Patenting of new plant varieties
- 3.5. The green revolution and biotechnology
  - 3.5.1. Growth of fertilizer and pesticide industry
  - 3.5.2. Impact of fertilizer and pesticides on agricultural workers
  - 3.5.3. Bhopal green revolution and biotechnology
  - 3.5.4. Agro-business and reckless commercial exploitation of biotechnology

### **4. Biotechnology and Human Health**

- 4.1. Genetic Markers: Diagnostic biotechnology
- 4.2. Conquest of disease
- 4.3. Genetic screening: Prevention of genetic disease and mental retardation
- 4.4. Genetic screening: Uses and abuses of amniocentesis
- 4.5. Cloning of human beings
- 4.6. Obsolescence and resilience of law

### **5. Legal Regulation of Biotechnology**

- 5.1.1. Regulation of government sponsored research
- 5.1.2. Regulation of Private R & D
- 5.1.3. Regulation of deliberate release of genetically mutated micro-organisms
- 5.1.4. Regulation of accidental release of genetically mutated micro-organisms
- 5.1.5. Comparative perspectives
  - 5.1.5.1. U.S.A.
  - 5.1.5.2. E.E.C
  - 5.1.5.3. U.K.
  - 5.1.5.4. INDIA
- 5.1.6. Progress of biotechnology and legal regulation in India

### Select Bibliography

- U.Baxi, Biotechnology and Legal Order: Dilemmas of the Future of Law and Human Nature (1993).
- D. Bull, A Growing Problem : Pesticide and the Third World Poor (1982)
- J. Doyle, Altered Harvest, Agriculture, Genetics and Fate of The World's Food Supply (1986)
- Z. Harsanyi & R. Hutton, Genetic Prophecy: Beyond the Double Helix (1987)
- United Nations, Our Common Future : The World Commission on Environment and Development(1987)
- Symposium on Biotechnology and Law, 11 Rutgers Computer and Technology Law Journal (1985)

### **PAPER – VI : EPIDEMIOLOGICAL AND PUBLIC HEALTH ASPECTS OF SCIENCE AND TECHNOLOGY**

1. **Introductory**
2. **Generation of Human resources through the exploitation of medical science and technology**
  - 2.1. Biomedical concept - health as absence of disease
  - 2.2. Ecological concept - health as a state of balance between man and environment
  - 2.3. Bio-social and bio-cultural concept - health includes the consideration of social, cultural and psychological factors
3. **Health as Basic human Right**
4. **Impediments to Public Health**
  - 4.1. Undue emphasis on curative medicine as the basis of primary health care (as a result of uncritical acceptance of the western model of medical health care)
  - 4.2. Concentration of health care services in urban areas
  - 4.3. Meagre resource allocations to cover the hitherto uncovered rural population



- 4.4. Neglect of preventive, promotive and rehabilitative aspects of health care

## **5. Population Stabilization: a Crucial Aspect of Public Health**

- 5.1. Correlation between population stability and primary health care
- 5.2. Modes of enforcing small-family norms

## **6. Public Health: A Key to National Socio-Economic Development**

- 6.1. Health for all: Alma-Ata Declaration
- 6.2. Sectors serving as inputs to public health
  - 6.2.1. Drugs and pharmaceuticals
  - 6.2.2. Agriculture and food production
  - 6.2.3. Rural development
  - 6.2.4. Education and social welfare
  - 6.2.5. Housing
  - 6.2.6. Potable water
  - 6.2.7. Sanitation
  - 6.2.8. Prevention of food adulteration
  - 6.2.9. Immunization
  - 6.2.10. Conservation of environment

## **7. Some Ponderable Issues**

- 7.1. Is it just to provide unlimited health care to self-inflicted diseases such as oral cancer due to tobacco chewing?
- 7.2. The right to life of the foetus versus the right of the woman to have control over her body and to refuse to carry to term a pregnancy she does not want.

Another related issue, at what stage the dignity of human person is said to be conferred on an embryo?

*(Note: To some, abortion is equivalent to killing a person and, therefore, it is not acceptable at any cost. Others argue that status of person does not begin until after birth; unfertilised spermatozoa and eggs are living cells comparable to other body cells, and no one claims their rights to life.*

*Will then a fertilized ovum have a right to life immediately after fertilization)*

7.3. Universal primary health care versus specialized medical care

**Select Bibliography**

Report of Working Group on Health for All by 2000A.D. (1981)

M.J. Roberts, "The Logical and Philosophical Problems of Allocation of Scarce Health Care Resources", in Health Policy Towards the 21st Century 47-72 (1984)

V. Ramalingaswami, "Medicine, Health and Human Development", The Ninth Jawaharlal Nehru Lecture, New Delhi, Nov. 1975.

D.D. Kulpati, "The Basic Concepts of Health", in Dilemmas in Health Policy, at C-9, C-13 (1986)

Pragya Kumar & Virendra Kumar, "Health as A Fundamental Human Right", in Dilemmas in Health Policy, at C-1 C-8 (1986).

**GROUP – (F): JURISPRUDENCE**

**PAPER – I : COMPARATIVE JUDICIAL PROCESS**

**1. Types of Judicial Processes**

**1.1. Nature of judicial process in pre-industrial society**

**1.1.1. Self -help**

**1.1.2. Kin-based redress**

**1.1.3. Mediation**

**1.1.4. Elder's Councils: Panchayats**

**1.1.5. Paramount chieftainships**

**1.2. Judicial process in the western legal traditions prior to industrialization**

**1.2.1. Judicial process in canon law**

**1.2.2. Judicial process in feudal customary law**

**1.2.3. Common law adjudication: Early history**

**1.2.4. Adjudication and law merchant**



- 1.2.5. Urban law and dispute handling
- 1.2.6. Growth of royal and imperial law
- 1.3. Judicial process and colonization
  - 1.3.1. Common law judicial process in America
  - 1.3.2. Common law judicial process in India
  - 1.3.3. Common law judicial process in Anglophonic and Civil Law adjudication in Francophonic Africa
- 1.4. Adjudication in revolutionary and post-revolutionary situations: An over view of Soviet and Chinese experiences.
- 2. Contemporary Natures of Judicial Process**
  - 2.1. The Rule of Law
  - 2.2. The doctrine of independence of judiciary as an aspect of Separation of Powers Division of Functions
  - 2.3. The Notion of the independence of judiciary and of legal professions
    - 2.3.1. Appointment of judges
    - 2.3.2. Transfer of judges
- 3. Institutional Structuring of Courts**
  - 3.1. Judicial personnel planning: India and elsewhere.
  - 3.2. Investment on maintenance of courts
  - 3.3. Comparative pattern of workload
  - 3.4. Alternatives to adjudication
  - 3.5. Patterns of court management
  - 3.7. Current crises of Indian adjudicatory system.
- 4. Staple Controversies Surrounding Judicial Roles**
  - 4.1. Notions of "Role, "Role Conflict", "Status and Role"
  - 4.2. Notions of judicial review
  - 4.3. Democratic "Character" of judicial review
  - 4.4. Legalism
  - 4.5. Ronald Dworkin's theory of judicial role
  - 4.6. Interpretivism
  - 4.7. Varieties of judicial and juristic activism

- 4.8. Problem of accountability of justices
- 4.9. Do we or can we, have a universal theory of judicial role?
- 5. The Indian Judicial Process**
  - 5.1. Indian debates on the role of justices (suppression, commitment, transfer and all that)
  - 5.2. The Socio-economic background of the Indian judiciary
  - 5.3. The 'politics' of judiciary
  - 5.4. The role of appellate Indian judges in development, and renovation, and retardation of constitutional goals.
  - 5.4. Impact of public opinion on judicial process
  - 5.5. Power of judicial review

#### **Select Bibliography**

- L.M. Singhvi, *Freedom on Trial*, (1991), Vikar, N.Delhi.
- Verinder Grover (Ed.) *Political Process and Role of Courts*, (1997) Deep & Deep Publications, N.Delhi.
- B.P.Sigh Seghal (Ed.) *Law, Judiciary and Justice* (1993) Deep & Deep, N.Delhi.
- Max Gluckman, *Judicial Processes Among the Barotse of northern Rhodesia* (1967).
- Paul Bohanan, *Justice and Judgment Among the Tiv* (1957)
- E. Adamson Hoebel, *The Law of the Primitive Man* (1968)
- Catherine Newman, *Law and Economic Organization: A Comparative Study of Pre-industrial Societies* (1983)
- Upendra Baxi, *Towards the Sociology of Indian Law* (1986)
- Harold J. Berman, *Law and Revolutions the Formation of the Western Legal Tradition* (1983).
- Yash Ghai, *The Political Economy of Law. A Third World Reader* (1986)
- Henry J. Abraham, *The Judicial Process* (1995), Universal
- Ronald Dworkin, *Taking Rights Seriously* (1996), Universal
- Ronald Dworkin, *A Matter of Principle* (1985)



- John Hart Ely, Democracy and Distrust. A Theory of Juridical Review (1980)
- J. Stone, Precedent and the Law: Dynamics of Common Law Growth (1985)
- Supreme Court of India, Third International Conferences of Appellate Judges  
Conference Papers and Proceedings (1985).
- Upendra Baxi, The Indian Supreme Court and Politics (1980)
- Upendra Baxi, Courage, Craft and Contention: The Indian Supreme Court in  
Mid-Eighties (1986), Tripathi, Bombay
- Rajeev Dhavan, The Supreme Court of India: A Study of its Socio-Juristic  
Techniques (1977), Tripathi, Bombay
- Rajeev Dhavan, and Alice Jacob, Selection and Appointment of Supreme Court  
Judges : A Case Study (1978)
- Rajeev Dhavan and P. Kalpakam, The Supreme Court under Strain: The  
Challenge of Arrears (1979)
- Simon Shetret & Jules Descheness (Ed.), Judicial Independence: A  
Contemporary Debate, Martinus Highoff Pub., Dordrecht, (1985)
- Martin Shapiro, Courts: A Comparative and Political Analysis (1981),  
University of Chicago
- H.R. Khanna, Judiciary in India and Judicial Process, (1985), S.C. Sarkar and  
Sons, Calcutta.

## **PAPER – II : MARXIAN AND THEORY OF LAW**

- 1. Introductory: Stereotypes of Marxian Jurisprudence**
  - 1.1. The Law is a tool of the ruling classes
  - 1.2. The law being located in superstructure is determined by the base of economic structure
  - 1.3. Accordingly, law mirrors but cannot initiate or accomplish social transformation
  - 1.4. Accordingly, all adjudication and legislative action is in the short and long term class biases in favour of the ruling classes
- 2. Beyond the Stereotypes: Marx's own Views on the Nature of Law and State**

## 2.1. The Young Marx

- 2.1.1. Marx's critique of Hegel's Philosophy of Right
- 2.1.2. Marx on customary law: Debates on the Theft of Wood
- 2.1.3. Marx on freedom of press
- 2.1.4. Marx on human rights (on the Jewish Question)

## 3. Beyond Stereotypes

- 3.1. Marx on the role of law in transition to capitalism
- 3.2. Law and bourgeois economic interests
- 3.3. Law and property relations
- 3.4. Law and class struggle

## 4. Law as Ideology and Ideology in law

- 4.1. Notions of ideology
- 4.2. Law as ideological apparatus (Althusser)
- 4.3. The form of ideology
- 4.4. The content of ideology
- 4.5. Legal thought and lawyers as articulators of ideology.

## 5. The Relative Autonomy of the Law

- 5.1. Juristic thought of E.B. Pashukhanis
- 5.2. Approaches of Antonio Gramsci: Hegemony/Counter Hegemony
- 5.3. Relative autonomy of the law: Nicos Poulantzas, E.P. Thompson
- 5.4. Relative Autonomy of Adjudication as a Distinct Realm of the Law

## 6. New Perspectives Arising out of Marxian Approaches

- 6.1. Marx on Justice: Critique of natural law
- 6.2. Adjudication as a site of contradiction between fractions of capital
- 6.3. Progressive legislation serving interest of subordinated classes
- 6.4. Understanding Social Action Litigation

## Select Bibliography

- Uppendra Baxi, Marx, Law and Justice: Some Indian, Perspectives (1992)  
Progress Publishers, Moscow, Theory of State and Law (1987)  
Maureen Gain & Alan Hunt, Marx and Engels on Law (1979)



Y. Chirkin; Yu Yudin and O. Znidkov, Fundamentals of Socialist Theory of the State and Law(1987)

Hugh Collins, Marxism and Law (1982)

Bob Fine, Democracy and the Rule of Law: Liberal Ideals and Marxist Critiques (1984)

Yash Ghai, et. al. The Political Economy of Law. A Third World Reader (1987)

Lloyd and Freeman, Lloyd's Introduction to Jurisprudence (1994), Sweet and Maxwell

E.P. Thompson, Whigs and Hunters;. The Origin of the Black Act, (1977).

### **PAPER – III : SOCIALIST JURISPRUDENCE**

#### **1.     Introductory**

- 1.1.   The Evolution of the notion of socialist legality
- 1.2.   The retreat of law: Stalinist "Jurisprudence"
- 1.3.   The retreat of law: Cultural revolution in China
- 1.4.   The resurgence of socialist legality
  - 1.4.1. The 1977 Soviet Constitution
  - 1.4.2. Glasnost and Perestroika: The Soviet jurisprudence of the mid-1980s.
  - 1.4.3. Restoration of law in post Mao-China

#### **2.     Legal Institutions Ownership**

- 2.1.   Theoretical point of departure in socialist law
- 2.2.   Socialist nationalization
- 2.3.   Social ownership and commodity production
- 2.4.   Socialist "private- property"
- 2.5.   Socialist "co-operatives"

#### **3.     Legal Institutions Contract**

- 3.1.   The nature of contractual obligation in socialist jurisprudence
- 3.2.   Plan and contract
- 3.3.   Breach of contract
- 3.4.   Settlement of disputes

#### **4. Legal institutions: Civil Liability**

- 4.1. Differentiation of liability: Moral, political, legal
- 4.2. Socialist conceptions of fault/strict liability
- 4.3. State liability

#### **5. Legal Institutions: Criminal Liability**

- 5.1. The differentiation of harms and acts in socialist jurisprudence
- 5.2. The rights of the accused in socialist jurisprudence
- 5.3. Special problems posed by abstention from criminal procedure
- 5.4. Socialist theories of punishment and sentencing

#### **6. Legal Institutions: Courts and Tribunals**

- 6.1. Ideological bases of structuration of judicial powers in socialist societies (pedagogic paternalist functions)
- 6.2. Public participation in administration of justice
- 6.3. Settlement of economic disputes
- 6.4. Organizational frames for settlement of labour disputes
- 6.5. Administrative penal jurisdiction in European socialist societies
- 6.6. Social courts
- 6.7. Procuracy in Soviet Union
- 6.8. Military jurisdiction
- 7. **Convergence between Socialist and Bourgeois Jurisprudence**
  - 7.1. Convergence in Civil Law
  - 7.2. Convergence in receptional imposition of law
  - 7.3. Convergence in the field of human right promotion and protection

#### **Select Bibliography**

- U. Baxi, Marx, Law and Justice: Some Indian Perspectives (1992).
- O. Bihari, Constitutional Models of Socialist Organization (1979)
- G.Y. Eorsi, Comparative Civil (Private) Law (1979)
- Kalman Kulesar, People's Assessors in the Courts: A Study on the Sociology of Law (1982)
- E. Lontai, The Research Contracts (1977)



A. Raz, Courts and Tribunals: A Comparative Study (1980)

Also Consult the leading comparative law journals: e.g. American Journal of Comparative Law, The International and Comparative Law Quarterly for contemporary development.

## **PAPER – IV : THEORIES OF JUSTICE**

### **1. The Concepts of Justice.**

1.1. The nature and varieties of justice.

1.1.1. Chhatrapathi Singh

1.1.2. Karl Mark

1.1.3. John Austin

1.1.4. Hans Kelson

1.1.5. C.K.Allen

1.1.6. Karl Renner

1.2. The meaning of justice

1.3. Justice as social norms

1.4. Justice as absolute moral principles

1.5. Justice as appropriative

1.6. Justice as obligatory

1.7. The objectivity of Justice

### **2. The Basis of Justice**

2.1. The Liberal contractual tradition

2.2. The liberal utilitarian tradition

2.3. The liberal moral tradition

2.4. The socialist tradition

### **3. The Relation between Law and Justice**

This section of the course should acquaint the students with the following problematics:

The dependence of the realization of justice on law

Can law be independent of justice?

The conformity of law to justice

The dependence of justice on social action and not law

The criteria of law (just law)

- 3.1. Equivalence Theories: Justice is nothing other than the positive law of the stronger classes.
- 3.2. Dependency theories. For its realization justice depends on law justice, however, is not the same as law
- 3.3. The Independence of justice theories

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## **PAPER – V : LAW AND SOCIETY**

### **1. Introductory**

- 1.1. The idea of social sciences
- 1.2. Law as a social science
- 1.3. Sociology of law as a relatively autonomous discipline
- 1.4. Place of law in the history of development of social science theory:  
Durkheim, Weber, Marx.
- 1.5. The Idea of legal system
  - 1.5.1. Normative
  - 1.5.2. Behavioural
  - 1.5.3. Institutional
  - 1.5.4. Cultural
- 1.6. The idea of social system: The problems of societal integration
  - 1.6.1. Consensus approach
  - 1.6.2. Conflict approach

### **2. Functions of Law**

- 2.1. Conception of "functions" : (Latent and manifest)
- 2.2. The law maintains legitimate monopoly of force in society.
- 2.3. The law articulates authoritatively the directions of social transformation by postulating ideals and values towards which public power should be amended.
- 2.4. The law provides resources for orderly and pacific handling of disputes and conflicts.
- 2.5. The law plays important role in resource allocation in society
- 2.6. The law allocates authority and power rendering accountable
- 2.7. The, law is an important instrumentality of social control

### **3. The impact of Society on Law**

- 3.1. The law as volksgiest (Savigny)



- 3.2. The impact of public opinion on the making, unmaking, and implementation of laws.
- 3.3. Pluralism: Control by elite, class domination and the law.
- 3.4. Pressure groups, lobbying and legal policies
- 3.5. Lobbying for the poor
- 4. Law as Instrument of Social Control - Impact of Law in Society**
  - 4.1. Notions of social control
  - 4.2. Religion, education and law as key instrumentalities of social control.
  - 4.3. Distinctive features of law as a means of social control.
    - 4.3.1. Imposition of obligation to obey the law
    - 4.3.2. Incentives to compliance: Bentham's conception of relevance of the law to social expectations.
    - 4.3.3. Varieties of sanctions
    - 4.3.4. Legal administration as an aspect of social control
    - 4.3.5. Control over competing/rival ideologies and belief systems
    - 4.3.6. Limits of effective legal action
- 5. Law, Culture, History**
  - 5.1. Notions of culture, (material and non-material)
  - 5.2. Ogburn's hypothesis of cultural lag of law.
  - 5.3. Evolutionary theories of law
    - 5.3.1. Durkheim progression from repressive to restitutive sanctions
    - 5.3.2. Sir Henry Maine: stages of growth of law
    - 5.3.3. Et. Adamson Hoebel's the law of the primitive man.
  - 5.4. Materialism and legal institutions: A Marxist view of legal development.
- 6. Non-State Legal Systems (NSLS)**
  - 6.1. Conceptions of NSLS
  - 6.2. Types of NSLS
  - 6.3. Interaction between NSLS and SLS.

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## **PAPER – VI : CONCEPTS OF RIGHTS**

- 1. Classification and Categorization of Rights**
  - 1.1. Constitutional Rights
  - 1.2. Rights protected by the IPC, Cr. P.C.
  - 1.3. New rights generated in case law.
  - 1.4. Types of rights: positive, negative, natural, legal, absolute in rem, in personam



- 1.5. Correlation of rights with duties.
- 2. History of Legal Discourse on Rights**
  - 2.1. French Revolution and the Rights of man: Locke, Thomas Paine, Rousseau, Kant
  - 2.2. The British Bill of Rights.
  - 2.3. The emergence of the American Bill of Rights.
  - 2.4. The Karachi Resolution and the First Indian Bill of Rights
  - 2.5. Declaration of Human Rights: The Soviet and Arab opposition.
  - 2.4. The Constitutional debates in India: 'due process', rights of minorities, rights to property.
- 3. Nature of Rights**
  - 3.1. What are Rights? Discuss:
    - 3.1.1. Rights as Trumps. (Ronald Dworkin)
    - 3.1.2. Rights as Utility: David Lyons.
    - 3.1.3. Rights as entitlement (Robert Nozick)
    - 3.1.4. Rights as values. (Allen Buchanan)
  - 3.2. Are there any Natural Rights?
  - 3.3. Are there any Absolute Rights?
- 4. Structure of Rights**
  - 4.1. Correlation of Rights with other legal concepts-the Hohfeldian concept.
  - 4.2. Generation of Rights: The internal logic of the number of rights.
- 5. The Basis of Rights**
  - 5.1. Why do people have rights?
  - 5.2. Grounds for claiming rights?
    - (a) Explanations emerging from theory of Self.
  - 5.3. Explanations emerging form theories of society.
  - 5.4. Explanations emerging from theories of morality.

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## **CHOICE BASED CREDIT SYSTEM (CS)**

### **SEMESTER PATTERN**

#### **Post Graduate (PG) LL.M 2 Year Programs under Faculty of Law (Affiliated Colleges)**

(w.e.f. Academic Year 2014-15)

<b>Name of the Faculty</b>	<b>Total credits</b>	<b>Average credits per semester</b>
Law	65	16.25

**Note:**

- Assessment shall consist of Continuous assessment (CA) and End of Semester Examination (ESE).
- Weightage: 80% for ESE & 20% for CA



## Tentative Distribution of Credits for 2 Year LL.M PG under Law faculty:

Semester	Paper No.	Name of Subject	External (ESE)	Internal (CA)	Total
Sem-I	Paper-I	Law and Social Transformation in India	(80 Marks)	(20 Marks) (2Test:15 Marks+General Performance : 5 Marks)	Credit : 5 (100 Marks)
Sem-I	Paper-II	Legal Education & Research Methodology	(80 Marks)	(20 Marks) (2Test:15 Marks+General Performance : 5 Marks)	Credit : 5 (100 Marks)
	Paper-III	Comparative Criminal Procedure	(80 Marks)	(20 Marks) (2Test:15 Marks+General Performance : 5 Marks)	Credit : 5 (100 Marks)
	Paper-IV	Penology: Treatment of Offenders	(80 Marks)	(20 Marks) (2Test:15 Marks+General Performance : 5 Marks)	Credit : 5 (100 Marks)
Sem-II	Paper-V	Priveledged Class Deviance	(80 Marks)	(20 Marks) (2Test:15 Marks+General Performance : 5 Marks)	Credit : 5 (100 Marks)
	Paper-VI	Indian Constitutional Law & the New Challenges	(80 Marks)	(20 Marks) (2Test:15 Marks+General Performance : 5 Marks)	Credit : 5 (100 Marks)
	Paper-VII	Drug Addictions	(80 Marks)	(20 Marks) (2Test:15 Marks+General Performance : 5 Marks)	Credit : 5 (100 Marks)
	Paper-VIII	Practical (Doctrinal & Non-Doctrinal)		Class Room Teaching :25 Marks Doctrinal Research :25 Marks Non Doctrinal Research:25 Marks Seminar : 15 Marks General Performance : 10 Marks	Credit : 5 (100 Marks)
Sem-III	Paper-IX	Judicial Process	(80 Marks)	(20 Marks) (2Test:15 Marks+General Performance : 5 Marks)	Credit : 5 (100 Marks)
	Paper-X	Juvenile Delinquency	(80 Marks)	(20 Marks) (2Test:15 Marks+General Performance : 5 Marks)	Credit : 5 (100 Marks)
	Paper-XI	Collective Violence and Criminal Justice System	(80 Marks)	(20 Marks) (2Test:15 Marks+General Performance : 5 Marks)	Credit : 5 (100 Marks)
Sem-IV	Paper-XII	Dissertation		Dissertation : 150 Marks Viva Voce : 50 Marks	Credit : 10 (200 Marks)
					1300 Marks
					Credit 65



### **Examination Rules:**

- Assessment shall consist of Continuous assessment (CA) and End of Semester Examination (ESE).
- **Weightage:** 80% for ESE & 20% for CA
- The CA towards 20% marks will be a continuous activity and at least two written tests must be conducted for a full course of 5 credits and the teacher should select a variety of mechanisms for evaluation such as:
  - i. Written Test (not more than two for each course as applicable): 15 marks
  - ii. General Performance : 5 Marks

The concerned teacher in consultation with the Principal shall decide the nature of questions for a Written Test.

- ESE for the remaining 80% marks will be conducted by the University.
- A student has to obtain 40 % marks in the combined examination of CA and ESE with a minimum passing of 30 % in both these separately.
- To pass the degree program, a student will have to obtain a minimum aggregate of 40% marks (E and above in grade point scale) in each course.
- If a student misses an internal assessment examination he/she will have a second chance with the endorsement of the Principal in consultation with the concerned teacher. Such a second chance shall not be the right of the student.
- CA marks will not change. A student cannot repeat CA. In case s/he wants to repeat CA, then s/he can do so only by registering the said course during the semester in which the course is conducted and up to 4 years (2 years program) provided the student was failed in that course.
- Students who have failed in a course may reappear for the ESE only twice in the subsequent period. The student will be finally declared as failed if she/he does not pass in all credits within a total period of four years. After that, such students will have to seek fresh admission as per the admission rules prevailing at that time.
- A student cannot register for the third/fourth semester, if she/he fails to complete 75% credits of the total credits expected to be ordinarily completed within two semesters.
- While marks will be given for all examinations, they will be converted into grades. The semester end grade sheets will have only grades and final grade sheets and transcripts shall have grade points average and total percentage of marks (up to two decimal points). The final grade sheet will also indicate the PG Center to which the candidate belongs.

### **Assessment and Grade point average:**

- The system of evaluation will be as follows: Each CA and ESE will be evaluated in terms of marks. The marks for CA and ESE will be added together and then converted into a grade and later a grade point average.
- Results will be declared for each semester.
- After the gain of minimum number of credits towards a completion of a PG program, a student will get a grade sheet with total grades earned and a grade point average.
- Marks/Grade/Grade Point:



Marks	Grade	Grade Point
100 to 85	O: Outstanding	06
84 to 70	A: Very Good	05
69 to 55	B: Good	04
54 to 50	C: Average	03
49 to 45	D: Satisfactory	02
44 to 40	E: Pass	01
39 to 0	F: Fail	00

➤ Final Grade:

(C)GPA	Grade
05.00-06.00	O: Outstanding
04.50-04.99	A: Very Good
03.50-04.49	B: Good
02.50-03.49	C: Average
01.50-02.49	D: Satisfactory
00.50-01.49	E: Pass
00.00-00.49	F: Fail

- 'B' Grade is equivalent to at least 55% of the marks as per circular No. UGC-1298/[4619]UNI- 4 dated December 11, 1999.
- A seven point grade system [guided by the Government of Maharashtra Resolution No. NGV-1298/[4619]UNI.4 dt. December 11, 1999 and the University regulations] will be followed.
- If the (C)GPA is higher than the indicated upper limit in the three decimal digit, then higher final grade will be awarded (e.g. a student getting (C)GPA of 4.492 may be awarded 'A' grade).
- The formula for CGPA will be based on Weighted Average. The final CGPA will not be printed unless a student earns minimum.65 credits.
- One credit is equivalent to 25 marks for evaluation purpose.